

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Kelvin Scott,

Plaintiff,

vs.

M. Petiford,

Defendant.

Civil Action No. 4:05-0917-TLW

ORDER

Plaintiff, appearing pro se, alleges that the Bureau of Prisons (BOP) erroneously changed his inmate performance pay grade status in violation of numerous provisions of Title 28 of the Code of Federal Regulations. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge recommending that Plaintiff's motion to dismiss be granted, his motion for a waiver of the balance of the filing fees be denied, and Defendant's motion to dismiss be rendered moot. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02, D.S.C.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

Plaintiff filed his complaint on March 31, 2005. Thereafter, on September 15, 2005, Plaintiff filed a motion requesting that his complaint be dismissed and that the balance of the filing fees he

owed to the court be waived. Defendant filed a motion to dismiss on December 6, 2005. The Magistrate Judge filed his Report on May 19, 2006. Plaintiff objects to the Report inasmuch as it recommends that this Court deny his motion for a waiver of the balance of his filing fees. The Court will briefly address Plaintiff's objection below.

Plaintiff asserts in his objection to the Report that the balance of his filing fees should be waived pursuant to his request that this case be dismissed. However, 28 U.S.C. § 1915(b)(1) provides, in part, "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." This Court has been unable to find, and Plaintiff failed to provide, any law to suggest that the balance of the filing fees for a plaintiff proceeding in forma pauperis be waived upon the plaintiff's dismissal of the claim. As such, this objection is overruled.

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court overrules the objection, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Plaintiff's motion to dismiss be **GRANTED**, his motion for a waiver of the balance of his filing fees be **DENIED**, and Defendant's motion to dismiss be rendered **MOOT**.

IT IS SO ORDERED.

s/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

July 13, 2006
Florence, South Carolina